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REMARKS

The Examiner has argued that at least one of the provisional applications upon which priority is claimed fails to provide adequate support under 35 U.S.C. 112 with respect to some of the claims. Applicant respectfully disagrees with this assertion.

The Examiner has rejected Claims 13 and 14 under 35 U.S.C. 112, second paragraph, as being indefinite. Applicant respectfully asserts that such rejections are avoided in view of the clarifications made to the above rejected claims.

The Examiner has rejected Claims 1, 4-7, 15 and 18-25 under 35 U.S.C. 103(a) as being unpatentable over Peng (U.S. Patent No. 6,317,754) in further view of Delaney et al. (U.S. Patent No. 6,374,289). The Examiner has further rejected Claims 8 and 11 under 35 U.S.C. 103(a) as being unpatentable over Radatti (U.S. Patent Application Publication No. 2002/0170052) in view of Delaney. Applicant respectfully disagrees with such rejection.

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on applicant's disclosure. *In re Vaack*, 947 F.2d 488, 20 USPQ2d 1438 (Fed.Cir.1991).

With respect to the first element of the *prima facie* case of obviousness and, in particular, the obviousness of combining the aforementioned references, the Examiner argues that it would have been obvious to employ the teachings of Delaney in the synchronization system of Peng by broadcasting the request for each object to a plurality

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of peers and receiving the requested object from one of the peers. To the contrary, applicant respectfully asserts that it would not have been obvious to combine the teachings of the Delaney and Peng references, especially in view of the vast evidence to the contrary.

Specifically, Peng relates to synchronizing servers, while Delaney relates to distributing data packages among peer clients. To simply glean features from a system for synchronizing servers, such as that of Peng, and combine the same with the *non-analogous art* of data package distribution among peer clients, such as that of Delaney, would simply be improper. Synchronizing servers, as in Peng, allows for a pair of servers to exchange data such that each resultant server contains the same data. On the other hand, distributing data packages among peer clients merely allows for data packages to be requested from peers to other peers where such other peers may respond to the request and only the requested data packages may be downloaded.

"In order to rely on a reference as a basis for rejection of an applicant's invention, the reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the inventor was concerned." In re Oetiker, 977 F.2d 1443, 1446, 24 USPQ2d 1443, 1445 (Fed. Cir. 1992). See also In re Deminski, 796 F.2d 436, 230 USPQ 313 (Fed. Cir. 1986); In re Clay, 966 F.2d 656, 659, 23 USPQ2d 1058, 1060-61 (Fed. Cir. 1992) In view of the vastly different types of problems synchronizing servers address as opposed to distributing data packages among peer clients, the Examiner's proposed combination is inappropriate.

More importantly, with respect to the third element of the prima facie case of obviousness and independent Claims 1 and 15, the Examiner has relied on Cols. 5-6 lines 50-67 and Figure 7 in Peng along with Col. 7, line 10-Col. 8, line 20 and Figure 2B in Delaney to make a prior art showing of applicant's claimed "broadcasting a single request to a plurality of peers by a requesting peer for a resource over the peer-to-peer network wherein the request contains an identification of the resource and the resource

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identification contains a resource version identifier” (see this or similar, but not identical language in each of the foregoing claims).

Applicant respectfully asserts that neither reference teaches “wherein the request contains an identification of the resource and the resource identification contains a resource version identifier,” as claimed by applicant (emphasis added). Specifically, the excerpt from Peng relied on by the Examiner simply discloses that “the first server sends its summarizing version vector to the second server.” However, such summarizing version vector is defined as “a vector of update stamps [where each] update stamp has a field for the associated object container’s identifier and a field for the associated time stamp” (see Col. 3, lines 15-20). In addition, the summarizing version vector is utilized for synchronizing a first server with a second server such that each server resultantly contains all objects that were contained in one server but not in the other before the synchronization (see Col. 5-Col. 8 steps 1-8). Thus, since the summarizing version vector includes update stamps for each object contained in the associated server, there is no request for a particular resource, in the manner claimed by applicant, let alone a “request [that] contains ... a resource version identifier” (emphasis added).

Further, the excerpt from Delaney relied on by the Examiner only teaches that a “request message preferably contains a protocol identifying version number (PVN) for the control protocol of the present invention” (see Col. 7, lines 17-20-emphasis added). Clearly, a protocol identifying version number, as in Delaney, does not meet applicant’s claimed “resource version identifier” (emphasis added), where it is the resource that is requested.

Also with respect to independent Claims 1 and 15, the Examiner has relied on step 6a in Col. of Peng to make a prior art showing of applicant’s claimed technique of “verifying the retrieved resource by ensuring the retrieved resource contains the version identifier embedded therein” (see this or similar, but not identical language in each of the foregoing claims). Applicant notes that such excerpt in Peng merely teaches verifying that a received object “has a version identifier or time stamp older than or equal to the

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version vector of the corresponding object in the first [receiving] server.” However, such version identifier/time stamp is only verified by making sure it is newer than the version already contained at the receiving server, and is not verified to ensure it “contains the version identifier embedded therein,” where the version identifier is contained in a request for a resource by a requesting peer, in the context claimed by applicant.

With respect to independent Claim 8, the Examiner has relied on paragraphs [0068] and [0094] of Radatti to make a prior art showing of applicant’s claimed technique of “comparing the listing of resources in the catalog with resources installed at the node to determine which resources are to be requested over the peer-to-peer network.” Applicant respectfully asserts that neither the excerpt relied on by the Examiner nor the entire Radatti reference teaches applicant’s specific claim language. In particular, the Radatti reference actually *teaches away* from applicant’s claimed technique of “comparing the listing of resources...to determine which resources are to be requested over the peer-to-peer network” (emphasis added) since Radatti specifically teaches “search[ing] for references to other modules [if the server target file hash does not match the client entry in the update_index file],” where such other modules relate to different versions (see paragraph [0094]).

Also with respect to independent Claim 8, the Examiner has relied on paragraphs [0093-0094] in Radatti to make a prior art showing of applicant’s claimed technique of “verifying each retrieved resource by ensuring the retrieved resource contains the version identifier embedded therein.” Applicant respectfully asserts that such excerpts in Radatti only teach determining if a “server target file hash does not match the client entry in the update_index file.” Applicant notes that Radatti in fact only teaches that the “update software obtains the update_hash file from the server, which [is] compared to the client update_hash file...[and if] another version of the software product is available, the hash is different, and the update program [proceeds] to download update_index from the server” (see paragraph [0083]). Thus, update_index is only downloaded if it is verified that the hash is different, and each retrieved resource is not verified in Radatti “by

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ensuring the retrieved resource contains the version identifier embedded therein," as claimed by applicant.

Thus, applicant respectfully asserts that at least the first and third elements of the *prima facie* case of obviousness have not been met, for the reasons noted above. A notice of allowance or a proper prior art showing of all of applicant's claim limitations, in combination with the remaining claim elements, is respectfully requested. Applicant further notes that the prior art is also deficient with respect to the dependent claims.

With respect to dependent Claim 6 et al., the Examiner has relied on step 3 in Cols. 5-6 of Peng to make a prior art showing of applicant's claimed technique of "comparing the listing of resources with resources installed at the requesting peer to determine which resources are to be requested over the peer-to-peer network." Applicant respectfully asserts that such excerpt merely relates to synchronizing two servers, and not "determin[ing] which resources are to be requested over the peer-to-peer network" (emphasis added).

With respect to dependent Claim 7 et al., the Examiner has relied on Col. 7, lines 13-18 in Delaney to make a prior art showing of applicant's claimed technique of "requesting each resource to be requested in a separate transaction such that each resource to be requested may be retrieved from a same or different responding peer." Applicant notes however, that the excerpt relied on by the Examiner relates to a single data package. Applicant respectfully asserts that in fact, Delaney *teaches away* from applicant's claim language since Delaney discloses that "[o]ptionally and preferably, if more than one data package is desired, a list of requested data packages is included in the request message rather than a single MD5 digest, in order to reduce the total number of request messages on the network" (see Col. 7, lines 22-25).

Again, applicant respectfully asserts that at least the third element of the *prima facie* case of obviousness has not been met, since the prior art references, when combined, fail to teach or suggest all of the claim limitations, as noted above.

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Thus, all of the independent claims are deemed allowable. Moreover, the remaining dependent claims are further deemed allowable, in view of their dependence on such independent claims.

In the event a telephone conversation would expedite the prosecution of this application, the Examiner may reach the undersigned at (408) 505-5100. The Commissioner is authorized to charge any additional fees or credit any overpayment to Deposit Account No. 50-1351 (Order No. NAI1P275/01.014.01).

Respectfully submitted,
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